

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 5:10-cr-00109-01

ISSAC CLIFFORD GRAY,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

On November 2, 2014, the United States Sentencing Guidelines were amended to reduce the guidelines in Section 2D1.1 by two levels for most drug offenses. (U.S.S.G. Amendment 782, Appx. C). Section 1B1.10 gives retroactive effect to these reductions and sets an effective date of November 1, 2015, for retroactively reduced sentences. On May 14, 2015, the Court entered an *Order* (Document 105) appointing the Federal Public Defender to represent the Defendant and directing the parties to respond with their positions respecting application of Amendment 782 to the Defendant's case.

The Court has received and considered the original Presentence Investigation Report (PSR), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and the addendum to the PSR from the Probation Officer. In addition, the Court has reviewed the responses from the United States (Document 106) and the Defendant (Document 107), submitted pursuant to the Court's *Order* (Document 105). The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

The Defendant pled guilty to possession with intent to distribute five grams or more of cocaine base, in violation of 21 U.S.C. § 841(a)(1), on November 29, 2010. The PSR attributed between 112 and 196 grams of cocaine base to the Defendant, which then corresponded to a base offense level of twenty-eight (28). He received a three-level reduction for acceptance of responsibility, resulting in a total offense level of twenty-five (25). He had seven criminal history points at the time of his conviction, resulting in a criminal history category of IV. His original guideline range was 84 to 105 months. On April 14, 2011, the Court imposed a sentence of eighty-four (84) months of imprisonment. Under the amended United States Sentencing Guidelines, the Defendant's total offense level is twenty-three (23). The revised Guideline imprisonment range is 70 to 87 months. He is, therefore, eligible for a sentencing reduction.

During his term of incarceration, the Defendant has completed the Inmate Financial Responsibility Program and has complied with the DNA collection requirement. He has completed both the 40-hour and the 100-hour drug education programs offered by the Bureau of Prisons. He has obtained his GED while incarcerated. He has received no disciplinary action or sanctions.

The United States does not object to a sentencing reduction. The Defendant argues that he was originally sentenced to the bottom of his guideline range, and should receive a sentence reduction to at or near the bottom of his amended guideline range. Such a reduction would result in his release from custody on November 1, 2015.

Having considered the Defendant's original and amended guideline ranges, the original sentencing materials, the addendum to the PSR, and the parties' responses, the Court **ORDERS** that the Defendant's base offense level be reduced by two levels, to twenty-six (26). After consideration of a three-level decrease for acceptance of responsibility, the Defendant's new total

offense level is **twenty-three (23)**. Given his criminal history category of **IV**, a revised guideline imprisonment range of **70 to 87 months** is established. The Court further **ORDERS** that the Defendant's sentence be **REDUCED** to **seventy (70) months**. Finally, in accordance with U.S.S.G. § 1B1.10(e)(1), the Court **ORDERS** that the Defendant's release date be no earlier than November 1, 2015.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to the Defendant and counsel, to the United States Attorney, to the United States Probation Office, and to the Office of the United States Marshal.

ENTER: August 10, 2015



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA